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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

WILDEARTH GUARDIANS,)
Plaintiff,) Case No. 4:11-cv-05651-YGR
v.)
LISA P. JACKSON,)
in her official capacity as Administrator of the)
United States Environmental Protection Agency,) consolidated with,
Defendant.)
)

MIDWEST ENVIRONMENTAL DEFENSE)
CENTER, and)Case No. 4:11-cv-05694-YGR
SIERRA CLUB,)
Plaintiffs,)PLAINTIFFS' MOTION FOR
v.)SUMMARY JUDGMENT
LISA P. JACKSON,)
in her official capacity as Administrator of the)
United States Environmental Protection Agency,)NOTICED FOR HEARING
Defendant.) JUNE 5, 2012 AT 2:00 PM
)

1 Plaintiffs WildEarth Guardians, Midwest Environmental Defense Center, and Sierra Club
2 respectfully request that the Court enter summary judgment for them on all claims in these two
3 consolidated cases. The Court has set this motion for hearing on June 5, 2012 at 2:00 pm.

4 As explain in detail in the accompanying brief, Plaintiffs are entitled to summary
5 judgment because Defendant Lisa P. Jackson, in her official capacity as Administrator of the
6 United States Environmental Protection Agency (EPA) has violated three mandatory duties with
7 regard to implementing the 2008 ozone National Ambient Air Quality Standards (NAAQS). She
8 has failed, by the Congressionally mandated deadline, to: (1) making findings that 40 states have
9 wholly failed to submit and two states have partially failed to submit "Infrastructure" state
10 implementation plans (SIPs) for the 2008 ozone NAAQS; (2) promulgate prevention of
11 significant deterioration regulations for the 2008 ozone NAAQS; and (3) failed to approve or
12 disapprove, in whole or part, the 2008 ozone NAAQS Infrastructure SIP submittals for
13 Tennessee and Kentucky. The Court should order EPA to complete task one within 30 days of
14 its order, task two within 12 months of its order and task three within five months of its order as
15 set out in detail in Plaintiffs' proposed order.

16 Respectfully submitted,

17 /s Robert Ukeiley

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Dated: April 13, 2012

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MIDWEST ENVIRONMENTAL DEFENSE)	
CENTER, and)	Case No. 4:11-cv-5694-YGR
SIERRA CLUB,)	
Plaintiffs,)	PLAINTIFFS' BRIEF IN SUPPORT OF
v.)	ITS MOTION FOR SUMMARY
LISA P. JACKSON,)	JUDGMENT
in her official capacity as Administrator of the)	
United States Environmental Protection Agency,)	NOTICED FOR HEARING
Defendant.)	JUNE 5, 2012 AT 2:00 PM

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GLOSSARY

CSAPR:	Cross State Air Pollution Rule a/k/a Transport Rule
EPA:	United States Environmental Protection Agency
NAAQS:	National Ambient Air Quality Standard
PSD:	Prevention of Significant Deterioration
SIP:	State Implementation Plans
NOx:	Nitrogen Oxides
CAIR:	Clean Air Interstate Rule
FIP:	Federal Implementation Plan
PM:	Particulate Matter
PM2.5:	Particulate Matter with a diameter of 2.5 micrometers or less

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 56(c) and the Court’s March 16, 2012 Order, [Dk#32], Plaintiffs WildEarth Guardians, Midwest Environmental Defense Center, and Sierra Club move for summary judgment on all claims in both complaints in this consolidated case.¹ As explained below, these are “missed deadline” claims against a federal agency that has blatantly missed statutory deadlines designed to protect public health and welfare. The Clean Air Act sets mandatory deadlines for Defendant Lisa P. Jackson, United States Environmental Protection Agency (“EPA”) Administrator, to issue a finding of failure to submit for each state that has not submitted a required “Infrastructure” state implementation plan for the 2008 ozone National Ambient Air Quality Standard (“NAAQS”), to complete a rulemaking process for Prevention of Significant Deterioration regulations for the 2008 ozone NAAQS, and to take final action on infrastructure state implementation plans which states have already submitted to EPA for the 2008 ozone NAAQS.

The main issue in this case is the remedy; that is, the amount of time the Court should grant EPA to comply with its mandatory duties. Liability should not be seriously contested, aside from EPA’s pending motion to dismiss only Plaintiffs’ claim related to the PSD rulemaking. These duties have serious consequences for the implementation of the 2008 ozone NAAQS, and thus for public health and welfare. Adverse impacts arise from ground-level ozone (“ozone”) pollution, commonly referred to as smog. Ozone represents a serious air quality issue in many parts of the United States. Exposure to ozone pollution exacerbates asthma, pneumonia,

¹ Midwest Environmental Defense Center and Sierra Club’s second amended complaint, [Dk#30] in case 4:11-cv-5694 contains three claims, one of which does not appear in WildEarth Guardians’ complaint in case 4:11-cv-5651. The order of the two identical claims in the complaints also differs. This brief will refer to the numbering used in the second amended complaint in case 4:11-cv-5694 unless otherwise noted. However, to be clear, Plaintiffs are moving for summary judgment on all three claims in the second amended complaint in case 4:11-cv-5694 and the two claims in the complaint in case 4:11-cv-5651.

1 and bronchitis, and can result in the permanent scarring of lung tissue. Fact 49. Exhaustive
 2 scientific review by EPA has determined that ozone also causes emergency department visits,
 3 hospital admissions for respiratory causes, and even death. Fact 50. Those most at risk from
 4 ozone pollution are children; active people, *e.g.*, runners and people who do manual labor
 5 outside; people with pre-existing lung and heart diseases such as asthma; and older people. Fact
 6 51. Moreover, the detrimental effects extend beyond public health. Ozone pollution also
 7 interferes with vegetation's ability to function properly. This interference results in injuries such
 8 as decreased crop yields and damage to native ecosystems. Fact 52.

9 Despite these serious consequences—and Congressional mandates—EPA has failed to:
 10 (1) issue findings of failure to submit “Infrastructure” State Implementation Plans (SIPs) for the
 11 2008 ozone NAAQS for all States that have not submitted;² (2) complete a rulemaking process
 12 to update the PSD regulations for the 2008 ozone NAAQS; and (3) take final action on 2008
 13 ozone NAAQS Infrastructure SIP submittals by Kentucky and Tennessee. In light of the grave
 14 nature of the injury from ozone pollution, EPA's history of delay, and the limited scope of the
 15 work needed to be done—especially for the finding of failure to submit—Plaintiffs request that
 16 the Court not countenance any EPA request for further delay and require EPA to adhere to the
 17 reasonable schedule that Plaintiffs propose below.

21 ² This claim addresses the following states and territories. Each has not submitted anything unless otherwise
 22 indicated: Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Delaware, Hawaii, Idaho
 23 (excluding sections 110(a)(2)(D)(i) and (G)), Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland,
 Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New
 Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon (excluding section 110(a)(2)(D)(i)),
 Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West
 Virginia, Wisconsin, and Wyoming. For the purposes of claim one, “states” and “42 states” refers to this list.

II. LEGAL BACKGROUND AND STANDARD OF REVIEW

A. Legal Background of the Clean Air Act: National Ambient Air Quality Standards and State Implementation Plan Submittals

Congress enacted the Clean Air Act to “speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again.” H.R. Rep. No. 1146, 91st Cong., 2d Sess. 1, 1, 1970 U.S. Code Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National Ambient Air Quality Standards for certain pollutants, including ozone.³ Within three years of a National Ambient Air Quality Standard’s promulgation or revision, each state must submit a state implementation plan that provides for the “implementation, maintenance, and enforcement” of the standard. 42 U.S.C. § 7410(a)(1). These SIPs are known as “Infrastructure” SIPs because they establish the infrastructure of a state’s basic air pollution control program. Other SIPs address other aspects of air pollution control, such as SIPs to clean up the air in specific nonattainment areas, or regional haze SIPs to get rid of haze in specific national parks. These SIPs are, not surprisingly, known as Nonattainment area SIPs and Regional Haze SIPs, respectively. The requirements for Infrastructure SIPs are set forth in 42 U.S.C. § 7410(a)(2)(A) – (M). These include, for example, enforceable emission limits for sources of pollution, 42 U.S.C. § 7410(a)(2)(A), and a network of ambient air pollution monitors and monitors of emissions from sources of pollution, 42 U.S.C. § 7410(a)(2)(B) & (F).

EPA maintains that two elements listed in 42 U.S.C. § 7410(a)(2)—42 U.S.C. § 7410(a)(2)(I) and (a)(2)(C) to the extent that it refers to nonattainment new source review permitting—are not subject to the three-year deadline in 42 U.S.C. § 7410(a)(1), and thus outside

³ Plaintiffs have already provided the Court with an explanation of how the parts of the Clean Air Act relevant to this case work. *See* Case 4:11-cv-5694 2nd Comp. ¶¶ 14-20; Case 4:11-cv-5694 Plaintiffs’ Opposition to Motion to Dismiss Plaintiffs’ Second Claim for Relief at p. 2 – 7. Plaintiffs will not repeat that explanation here.

1 the scope of this case. EPA's position is that these two provisions are subject to a separate
 2 deadline in the statute dealing with nonattainment areas. For the purposes of this motion,
 3 Plaintiffs do not dispute EPA's position.

4 The Infrastructure SIP elements at 42 U.S.C. § 7410(a)(2)(D)(i) are referred to as the
 5 Good Neighbor provisions. They require each state to ensure that its pollution is not causing
 6 certain adverse impacts in downwind states such as contributing to nonattainment areas or
 7 interfering with maintenance of the NAAQS. *Id.* at § 7410(a)(2)(D)(i)(I). Just last week EPA
 8 finished complying with its obligations in a deadlines suit regarding the Good Neighbor
 9 provisions for the 1997 ozone NAAQS. *See WildEarth Guardians v. Jackson*, 4:09-cv-2453-
 10 CW (N.D. Cal). The Good Neighbor provisions of the Infrastructure SIP for 1997 ozone
 11 NAAQS and the 1997 PM_{2.5} NAAQS have been implemented through programs called the NO_x
 12 SIP Call, the Clean Air Interstate Rule (CAIR), and the Transport Rule.⁴ *See* 63 Fed. Reg.
 13 57,356 (Oct. 27, 1998); 70 Fed. Reg. 25,162 (May 12, 2005); 76 Fed. Reg. 48,208 (Aug. 8,
 14 2011). The NO_x SIP Call and CAIR have resulted in reductions of hundreds of thousands of
 15 tons of air pollution which has lowered ambient pollution levels for millions of people.⁵
 16 However, the NO_x SIP Call, CAIR, and the Transport Rule were designed to comply with the 85
 17 parts per billion 1997 ozone NAAQS,⁶ not the more protective 75 parts per billion 2008 ozone
 18 NAAQS. The relief Plaintiffs seek in this case will be one of the first step in moving EPA
 19 towards getting the emission reductions that will get ozone pollution below the 75 parts per
 20 billion 2008 ozone NAAQS and ensuring that it stays there.

21 _____
 22 ⁴ The Transport Rule is also sometimes referred to as the Cross State Air Pollution Rule (CSAPR).

23 ⁵ The Transport Rule was stayed by the U.S. Court of Appeals for the D.C. Circuit on December 30, 2011.

⁶ The 1997 ozone NAAQS is written in the regulations as 0.08 parts per million which equals 80 parts per billion. Unfortunately, EPA chose to use a rounding convention that effectively raised the 1997 ozone NAAQS to the less protective level of 85 parts per billion.

1 The Clean Air Act requires EPA to determine whether there has been an administratively
 2 complete state implementation plan submittal, including an Infrastructure SIP, “no later than 6
 3 months after the date, if any, by which a State is required to submit the plan or revision.” 42
 4 U.S.C. § 7410(k)(1)(B). *See also* 42 U.S.C. § 7410(c)(1)(A) (EPA must step in and promulgate
 5 a Federal Implementation Plan if it finds a state has failed to make a required SIP submission).
 6 If a state fails to submit any required state implementation plan, there is no submittal that may be
 7 deemed administratively complete and EPA must make a determination stating that the state
 8 failed to submit the required state implementation plan. 42 U.S.C. 7410(k)(1)(B). This is
 9 commonly referred to as a “finding of failure to submit.” This is the mandatory duty at issue in
 10 claim one.

11 EPA also has a mandatory duty to promulgate regulations to prevent significant
 12 deterioration not more than 2 years after the date of promulgation of a NAAQS. This is the
 13 mandatory duty at issue in claim two and EPA’s motion to dismiss.

14 If a state does make a SIP submittal, EPA has a mandatory duty to take final action on
 15 any administratively complete SIP submittal by approving in full, disapproving in full, or
 16 approving in part and disapproving in part within 12 months of the date the submittal is deemed
 17 administratively complete. 42 U.S.C. § 7410(k)(2) and (3). This is the mandatory duty at issue in
 18 claim three.

19 **B. Legal Standard for Summary Judgment**

20 Summary judgment is appropriate if there is no genuine dispute of material fact and the
 21 moving party is entitled to judgment as a matter of law. *Summers v. A. Teichert & Son,*
 22 *Inc.*, 127 F.3d 1150, 1152 (9th Cir.1997). Federal Rule of Civil Procedure 56 provides, in
 23 pertinent part, that judgment “shall be rendered forthwith if the pleadings, depositions,

1 answers to interrogatories, and admissions on file, together with the affidavits, if any,
2 show that there is no genuine issue as to any material fact and that the moving party is
3 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c).

4 When the evidence is “so one-sided that one party must prevail as a matter of law,”
5 summary judgment is appropriate. *Anderson v. Liberty Lobby*, 477 U.S. 242, 251-52 (1986).
6 When the moving party has demonstrated that there is no material issue of fact for trial, the
7 “adverse party may not rest upon the mere allegations or denials of the adverse party’s pleadings,
8 but...must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P.
9 56(e).

10 Summary judgment is not treated as “a disfavored procedural shortcut” but as “an
11 integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and
12 inexpensive determination of every action.” *Celotex Corporation v. Catrett*, 477 U.S. 317, 327
13 (1986) (“quoting Fed. R. Civ. P. 1”). Summary judgment is a particularly appropriate tool for
14 resolving claims challenging agency action. *See Occidental Eng’g Co. v. INS*, 753 F.2d 766, 770
15 (9th Cir. 1985). Accordingly, summary judgment is entirely appropriate in the instant case
16 because the issues presented address only the legality of EPA’s failure to perform its mandatory
17 duties.

18 **III. ARGUMENT**

19 EPA is liable under the Clean Air Act for (1) failure to issue a finding of failure to submit
20 for each state that has not submitted a required Infrastructure SIP for the 2008 ozone NAAQS,
21 (2) failure to promulgate PSD regulations for the 2008 ozone NAAQS, and (3) failure to take
22 final action on Kentucky and Tennessee submittals of Infrastructure SIPs for the 2008 ozone
23 NAAQS. In this case, it is critical that the Court order EPA to follow a reasonable schedule that

requires Defendant to promptly complete its mandatory duties. This is necessary to protect the public from serious risks posed by states that have not implemented the 2008 ozone NAAQS.

A. Plaintiffs Have Standing to Bring this Action

An organization has standing to bring this suit on behalf of its members when: (1) its members have standing to sue in their own right; (2) the interests at stake are germane to its organizational purpose; and (3) neither the claim asserted nor the relief requested requires the members to participate directly in the lawsuit. *See Hunt v. Washington State Apple Advertising Comm’n*, 432 US 333, 343 (1997). The latter two conditions are easily satisfied here. *See* Decl. of Neil Carman ¶ 3; Decl. of Yolanda Andersen ¶¶ 2-4; Decl. of Francis Blake ¶¶ 4-10; Decl. of James Kleissler ¶¶ 4-11.

With regard to the first condition, individual organizational members have standing to sue in their own right if they have suffered “an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical...” *See Friends of the Earth v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 180 (2000). These injuries must be “fairly traceable to the challenged action of [D]efendant; and.... It is likely, as opposed to merely speculative, that the [injuries] will be redressed by a favorable decision.” *Id.* at 180-81.

1. Harm from exposure to ozone pollution

Sierra Club members live, work, and/or recreate in areas that are adversely impacted by ozone. *See e.g.* Decl. of Francis Blake ¶¶ 3-7; Decl. of James Kleissler ¶¶ 3-8. Sierra Club has over 600,000 members including members in all of the States at issue in the case, including the District of Columbia and Puerto Rico. *See* Decl. of Yolanda Andersen ¶ 7. Sierra Club members such as Francis Blake and James Kleissler have asthma, which puts them in the class of people who are particularly susceptible to harm from ozone pollution. Decl. of Francis Blake ¶¶

6, 10; Decl. of James Kleissler ¶¶ 6-7; Fact 51. Mr. Kleissler notes that his asthma symptoms are worse on bad air days. Decl. of James Kleissler ¶ 7. Not only does having asthma and having asthma attacks harm Sierra Club members physically, it harms them economically because they have to spend money on medications. Decl. of Francis Blake ¶ 11; Decl. of James Kleissler ¶ 7.

These injuries of exposure to ozone pollution are traceable to, and would be redressed by, EPA resolving EPA's failure to issue findings of failure to submit for states that have not submitted required state implementation plans for the 2008 ozone NAAQS, failure to issue Prevention of Significant Deterioration regulations for the 2008 ozone NAAQS, and failure to take final action on the Kentucky and Tennessee Infrastructure SIP submittals for the 2008 ozone NAAQS as all three of these mandatory duties are designed to lessen people's exposure to harmful ozone pollution. *See e.g.* Decl. of Francis Blake ¶¶ 9, 11-13 (Blake lives in Harris County, Texas which is adversely impacts by ozone pollution coming from other states which is an issue required to be addressed by 42 U.S.C. § 7410(a)(2)(D)(i)(I)); Decl. of James Kleissler ¶¶ 8-14 (same for Allegheny County, PA).

2. Procedural Harm

Standing for challenges of the failure of government officials to engage in required procedural actions enjoy a lesser requirement of traceability and redressability. As the Supreme Court has explained, "[t]he person who has been accorded a procedural right to protect a concrete interest can assert that right without meeting all the normal standards for redressability and immediacy." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n.7 (1992). This decision has been repeatedly applied in this Circuit. *See, e.g., Cantrell v. City of Long Beach*, 241 F.3d 674, 682 (9th Cir. 2001); *Oregon Natural Desert Ass'n v. Dombeck*, 172 F.3d 1092, 1094 (9th Cir. 1998); *Douglas County v. Babbitt*, 48 F.3d 1495, 1501 (9th Cir. 1995), *cert. denied*, 516

1 U.S. 1042 (1996). Therefore, the fact that Plaintiffs request the Court order EPA to engage in
 2 procedures, the outcome of which is not certain, does not undercut the immediacy or
 3 redressability of the injuries explained above.

4 Furthermore, Defendant has “failed to comply with a statutory provision” (42 U.S.C. §
 5 7410(k)(1)(B)) requiring the EPA Administrator to “determine whether the minimum criteria [of
 6 a state implementation plan submission] have been met.” A finding of failure to submit triggers
 7 an obligation for EPA to promulgate a Federal Implementation Plan (“FIP”) if the state does not
 8 submit and EPA does not approve a SIP within two years. 42 U.S.C. § 7410(c)(1). The other
 9 two claims are that EPA failed to promulgate PSD regulations for the 2008 ozone NAAQS and
 10 failed to take final action on the 2008 ozone Infrastructure SIP submittals for Kentucky and
 11 Tennessee. EPA’s violation of these three mandatory duties is denying Sierra Club, itself as an
 12 organization, as well as its members, the opportunity to participate in these rulemaking
 13 processes. *See e.g.* Decl. of Neil Carman ¶¶ 2 – 7.

14 **3. Informational harm**

15 Sierra Club also is denied information which would be useful for its work by EPA’s
 16 illegal delays. *See* Decl. of Neil Carman ¶¶ 3-4, 6. Denial of information is an injury sufficient
 17 to establish standing. *Center for Biological Diversity v. Abraham*, 218 F.Supp.2d 1143, 1161
 18 (N.D. Cal. 2002).

19 **4. Standing for one is standing for all**

20 The Supreme Court has repeatedly held that if one party has standing, other parties may
 21 remain in the litigation without an inquiry into their standing. *See, e.g., Clinton v. City of New*
 22 *York*, 524 U.S. 417, 431 n.19 (1998); *U.S. Dept. of Labor v. Triplett*, 494 U.S. 715, 719 (1990);
 23 *Bowsher v. Synar*, 478 U.S. 714, 721 (1986); *Watt v. Energy Action Educational Foundation*,

1 454 U.S. 151, 160 (1981); *Village of Arlington Heights v. Metropolitan Housing Development*
 2 *Corp.*, 429 U.S. 252, 264, and n. 9 (1977). This Circuit has held similarly. *Board of Natural*
 3 *Resources of State of Wash. v. Brown*, 992 F.2d 937, 942 (9th Cir. 1993).

4 **5. WildEarth Guardians and Midwest Environmental Defense Center**
 5 **can also establish standing**

6 Although they are not required to do so because one plaintiff, Sierra Club, has already
 7 established standing, plaintiffs WildEarth Guardians and Midwest Environmental Defense
 8 Center can also establish standing in this case. Both organizations have submitted declarations
 9 of members that satisfy the standing criteria. *See* Decl. of Jeremy Nichols at ¶¶ 6-21; Decl. of
 10 Alexandra DeLucenay at ¶¶ 2-13; Decl. of James Saul at ¶ 5.

11 **B. The Act Imposes Mandatory Duties For Each of the Claims In This Case**

12 EPA has failed to perform three separate mandatory duties. Claim one alleges a violation
 13 of the mandatory duty in 42 U.S.C. § 7410(k)(1)(B) to make a finding of failure to submit
 14 Infrastructure SIPs for the 2008 ozone NAAQS. Before explaining why Plaintiffs believe 42
 15 U.S.C. § 7410(k)(1)(B) creates a mandatory duty to make a finding of failure to submit, it is
 16 important to note that EPA has already admitted this so it should be an uncontested issue. EPA
 17 stated that it does not contest the Court's jurisdiction in Claim One. *See* Defendant's
 18 Memorandum in Support of Motion to Dismiss Plaintiffs' Second Claim for Relief [Dk# 21-1] at
 19 2, fn1. In order to have jurisdiction under 42 U.S.C. § 7604(a)(2), which is the cause of action
 20 for claim one, there must be a violation of a mandatory duty. Thus, EPA has already admitted
 21 that 42 U.S.C. § 7410(k)(1)(B) creates a mandatory duty.

22 The first sentence of 42 U.S.C. § 7410(k)(1)(B) reads:

23 Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than
 6 months after the date, if any, by which a State is required to submit the plan or revision,

1 the Administrator shall determine whether the minimum criteria established pursuant to
2 subparagraph (A) have been met.

3 42 U.S.C. § 7410(k)(1)(B). This sentence addresses two situations. The first, not relevant to
4 claim one, is when a state makes a SIP submittal. In such situations, EPA must, within 60 days
5 of the submittal, determine whether the minimum criteria for SIP submittals have been met.
6 This is known as a completeness or administrative completeness determination.

7 The second clause of the sentence can only have meaning if a duty exists in the absence
8 of a state submission. This clause provides, based on its plain language, that if, six months after
9 the deadline for submission, there has been no submission, then EPA still has a mandatory duty
10 to determine whether the minimum criteria have been met. Of course, the minimum criteria
11 cannot have been met if the state submitted nothing. Therefore, if a state fails to submit a SIP
12 submittal by its due date, EPA has a mandatory duty to make a “finding of failure to submit” for
13 that submittal.

14 Congress’ use of the term “shall” in 42 U.S.C. § 7410(k)(1)(B) makes it clear that this is
15 a mandatory duty. *Brower v. Evans*, 257 F.3d 1058, 1068 fn. 10 (9th Cir. 2001) (“‘Shall’
16 means shall.” *Center for Biological Diversity v. Norton*, 254 F.3d 833, 837-38 (9th Cir.2001)
17 (quoting *Forest Guardians v. Babbitt*, 174 F.3d 1178, 1187-88 (10th Cir.1999)); *see also United*
18 *States v. Monsanto*, 491 U.S. 600, 607 (1989) (by using “shall” “Congress could not have chosen
19 stronger words to express its intent that forfeiture be mandatory”).”)

20 Thus, EPA has a mandatory duty to determine that the minimum criteria have not been
21 met. This is referred to as a “finding of failure to submit” but technically, pursuant to the plain
22 language of the statute, it is a determination that states have not made a submittal that meets the
23 minimum criteria required for that submittal. *See generally Natural Resources Defense Council,*

1 *Inc. v. EPA*, 22 F.3d 1125, 1131 (D.C. Cir. 1994) (“Initially, section 110(k)(1)(B) *requires* the
 2 EPA to make a finding that the submittal is complete or incomplete within 2 months of
 3 submission or 6 months of the submission deadline.”) (emphasis added).

4 Claim two alleges a violation of EPA’s mandatory duty in the second sentence of 42
 5 U.S.C. § 7476(a) to promulgate prevention of significant deterioration regulations for the 2008
 6 ozone NAAQS. The Court has already heard the parties’ arguments on whether or not this
 7 creates a mandatory duty in the context of EPA’s motion to dismiss. Plaintiffs will not repeat
 8 those arguments here.

9 Claim three alleges violation of EPA’s mandatory duty in 42 U.S.C. § 7410(k)(2) and (3)
 10 to approve or disapprove, in whole or part, SIP submissions within 12 months of being deemed
 11 complete. The statute provides:

12 **(2) Deadline for action**

13 Within 12 months of a determination by the Administrator (or a determination
 14 deemed by operation of law) under paragraph (1) that a State has submitted a plan
 15 or plan revision (or, in the Administrator’s discretion, part thereof) that meets the
 16 minimum criteria established pursuant to paragraph (1), if applicable (or, if those
 criteria are not applicable, within 12 months of submission of the plan or
 revision), the Administrator shall act on the submission in accordance with
 paragraph (3).

17 **(3) Full and partial approval and disapproval**

18 In the case of any submittal on which the Administrator is required to act under
 19 paragraph (2), the Administrator shall approve such submittal as a whole if it
 20 meets all of the applicable requirements of this chapter. If a portion of the plan
 revision meets all the applicable requirements of this chapter, the Administrator
 may approve the plan revision in part and disapprove the plan revision in part.
 The plan revision shall not be treated as meeting the requirements of this chapter
 until the Administrator approves the entire plan revision as complying with the
 applicable requirements of this chapter.

42 U.S.C. § 7410(k)(2) – (3). Thus, the plain language establishes that EPA must approve or disapprove a SIP submittal within 12 months of when it is determined to be complete. As explained above, Congress’ use of the word “shall” makes clear that this is a mandatory duty.

C. Plaintiffs are entitled to summary judgment as to EPA’s failure to make findings of failure to submit 2008 ozone NAAQS Infrastructure SIPs

1. EPA is liable for failing to make findings of failure to submit 2008 Ozone Infrastructure SIPs

Plaintiffs are entitled to summary judgment as to their first claim because defendants have missed a statutory deadline. As discussed above, 42 U.S.C. § 7410(k)(1)(B) establishes a deadline for EPA to make findings of failure to submit of six months after any SIP submission due date. EPA promulgated the 2008 ozone NAAQS on March 12, 2008. *See* 73 Fed. Reg. 16,436-16,514 (March 27, 2008). Thus, the Clean Air Act sets a submission deadline for Infrastructure SIPs for the 2008 ozone NAAQS on March 12, 2011. 42 U.S.C. § 7410(a)(1). Outside the context of this litigation, EPA acknowledges that the deadline for states to submit their 2008 ozone NAAQS Infrastructure SIPs is March 12, 2011. *See* 73 Fed. Reg. 16436, 16,503 (March 27, 2008). *See also* Fact2. Six months after March 12, 2011 is September 12, 2011; a date already passed. Yet 40 States have wholly failed to submit their 2008 ozone NAAQS Infrastructure SIP and two States have failed to submit certain elements of their 2008 ozone NAAQS Infrastructure SIPs. Facts 3-46. EPA has not made findings of failure to submit pursuant to 42 U.S.C. § 7410(k)(1)(B) for these 42 states. Fact 47. Therefore, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to make findings of failure to submit for these 42 states with regard to the 2008 ozone NAAQS Infrastructure SIP. Thus, Plaintiffs are entitled to summary judgment on claim one.

2. The Court should require EPA to make the findings of failure to submit within 30 days of issuance of the Court's order

As to remedy, the Court should order that EPA sign a final rule containing a finding of failure to submit 2008 ozone Infrastructure SIPs for the 42 states within 30 days of the Court's order and requiring EPA to forward that final rule of the Office of the Federal Register within three working days of signature. This would mean that EPA would have illegally delayed the critical finding by approximately a year by the time EPA issues the finding. This remedy is appropriate because of, as detailed below, (1) the serious public health impacts caused by EPA's illegal delay; (2) the relative simplicity of the task as documented by Plaintiffs' expert and Plaintiffs preparation of a sample finding; and (3) EPA's abysmal record of delay in implementing the Clean Air Act that makes any assertions by EPA about the appropriate timing of the finding completely suspect.

In addition, we note that Plaintiffs are not the only ones that want EPA to promptly make this finding of failure to submit. For example, the Director of the State of Maryland's Air and Radiation Management Administration recently wrote EPA urging EPA to promptly "issue findings of failure to submit for overdue [2008 ozone] infrastructure SIPs[.]" Fact 48.

a. There are serious public health and welfare impacts caused by EPA's illegal delay in making a finding of failure to submit

As explained above, EPA acknowledges that exposure to ozone pollution can kill innocent people as well as cause expensive emergency department visits and hospital admissions. 73 Fed. Reg. at 16,436. Exposure to ozone also exacerbates asthma, pneumonia, and bronchitis, and can result in the permanent scarring of lung tissue. Fact 49. Children are most at risk from ozone pollution, as well as people who exercise or perform manual labor

1 outside, people with pre-existing lung and heart diseases such as asthma, and the elderly. Fact
2 51.

3 The detrimental effects of ozone pollution extend beyond public health. Ozone interferes
4 with vegetation's ability to function properly, which results in injuries such as decreased crop
5 yields and damage to native ecosystems. Fact 52.

6 As a life or death matter, it only makes sense that the remedy should be as expeditious as
7 possible. Fortunately, as explained below, EPA's task is straightforward and not time
8 consuming.

9 **b. Making the finding is a relatively simple task as demonstrated**
10 **by Plaintiffs' expert and Plaintiffs' preparation of a sample**
11 **finding**

12 Issuing findings of failure to submit is a straightforward process that EPA should be able
13 to complete within thirty days. It is relatively easy to track the status of a state's Infrastructure
14 SIP submittals—anyone can do so on the EPA's own webpage:

15 http://www.epa.gov/air/urbanair/sipstatus/reports/map_i.html. A search of this webpage for any
16 of the 42 states currently at issue reveals that SIPs were due on March 12, 2011, that there have
17 been no submittals, and that there have been no findings of failure to submit. *See, e.g.*, EPA,
18 Status of State SIP Infrastructure Requirements—California: 110(a)(2) Ozone (2008)
19 Infrastructure Requirements (available at
20 http://www.epa.gov/air/urbanair/sipstatus/reports/ca_infrabypoll.html#x110_a_2_ozone_2008).
21

22 Furthermore, EPA can issue these findings without the need for notice and comment
23 rulemaking. *See* 5 U.S.C. § 553(b)(B). EPA has issued findings of failure to submit in the past
without notice and comment; it did so three times before with regard to Infrastructure SIPs for

1 the 1997 ozone and PM2.5 NAAQS, and that was before the SIP Status webpage streamlined the
2 process. *See* 70 Fed. Reg. 21,147, 21,148 (Apr. 25, 2005); 73 Fed. Reg. 16,205 (March 27,
3 2008); 73 Fed. Reg. 62,902 (Oct. 22, 2008).

4 The reasonableness of a thirty-day period for EPA action is demonstrated by David
5 Howekamp, whom Plaintiffs retained as an expert on the appropriate remedy for EPA's failure
6 to make a finding of failure to submit 2008 ozone Infrastructure SIPs. Mr. Howekamp was a
7 career employee at EPA for 31 years. Declaration of David Howekamp in Support of Plaintiffs'
8 Motion for Summary Judgment (Howekamp Decl.) at ¶2. For the last 18 of those years, he was
9 the Director of the Air Division for EPA's Region 9 office in San Francisco. *Id.* In that position,
10 he managed a budget of over \$40 million and directed a staff of 120 scientists, engineers and
11 planners in implementing the Clean Air Act. *Id.*

12 Mr. Howekamp has extensive experience in establishing and negotiating rulemaking
13 schedules; most of the rulemakings produced by his Division were performed as a result of court
14 orders or settlement agreements. *Id.* at ¶ 3. He was personally responsible for preparing Federal
15 Register notices making findings of failure to submit all or portions of SIPs, so he has first-hand
16 knowledge of the technical and policy considerations in such matters and the management
17 demands and resource requirements for producing these notices. *Id.* at ¶ 4.

18 Mr. Howekamp states that a 30-day timetable for EPA to make the findings of failure to
19 submit the 2008 ozone Infrastructure SIPs is reasonable because (1) EPA has known about
20 Plaintiffs' intent to sue since September 2011, and will have some months more before a court
21 order is issued, (2) findings of failure to submit are routine so there are "well proven template[s]
22 for rapidly creating, signing and publishing the required findings[]," (3) no technical or policy
23 analysis is required but rather a straightforward determination, and (4) preparing the Federal

1 Register notice is simplified because the majority of the review requirements of more
 2 complicated rulemakings by the agency need not be addressed. *Id.* at ¶ 6.

3 To further demonstrate how straightforward the task of preparing the finding of failure to
 4 submit is, Jeremy Nichols, the Climate and Energy Director for plaintiff WildEarth Guardians,
 5 actually drafted a mock version of the finding. Mr. Nichols was able to draft a finding in two
 6 and a half hours. Affidavit of Jeremy Nichols ¶ 27. Even if we assume that management review
 7 took ten times as long as it took to actually write the document, which would be a truly sad state
 8 of affairs, we are still talking about less than a week of staff time for an agency that has a multi-
 9 billion dollar budget. This demonstrates that thirty days is more than adequate time for EPA to
 10 prepare the finding.

11 **c. EPA's abysmal record of delay in implementing the Act**
 12 **makes any assertions by EPA about the appropriate timing of**
the finding suspect

13 EPA's consistent missing of Congressional deadlines demonstrates that any proposed
 14 schedule it offers is suspect. Put simply, when it comes to implementing the Clean Air Act, EPA
 15 is in the business of delay. Indeed, in just the past few years in this one judicial district
 16 environmental interests have filed many suits seeking to force EPA to meet mandatory, non-
 17 discretionary deadlines found in the Clean Air Act. *See, e.g., WildEarth Guardians v. Jackson*,
 18 Case No. 4:11-cv-2205-SI (N.D. Cal. 2011); *Sierra Club v. Jackson*,
 19 3:10-cv-4060-CRB (N.D. Cal. 2010); *WildEarth Guardians v. Jackson*, 4:09-cv-2453-CW (N.D.
 20 Cal. 2009); *Center for Biological Diversity v. Jackson*, 3:10-cv-1846-MMC (N.D. Cal. 2010);
 21 *Communities for a Better Environment v. US EPA*, 3:07-cv-3678-JSW (N.D. Cal. 2007);
 22 *Coalition for Clean Air v. Southern California Edison Co.*, 971 F.2d 219, 228 (9th Cir. 1992).
 23

Delay in the implementation of several other ozone rules highlights the need for an expeditious schedule. EPA still has not fully implemented ozone standards from 1979 and 1997 even though EPA has determined that full implementation of these standards is not enough to ensure public health protection because they are not as protective as the 2008 ozone NAAQS. *See, e.g.*, 76 Fed. Reg. 82,133 (Dec. 30, 2011) (finding that three areas in California did not attain the 1979 one-hour ozone standard by their attainment date); 76 Fed. Reg. 80,760 (Dec. 27, 2011) (finalizing federal implementation plans for five states for the 42 U.S.C. § 7410(a)(2)(D)(i) element of the Infrastructure SIPs for the 1997 ozone NAAQS). Additionally, the D.C. Circuit Court recently stayed another ozone rule, the Transport Rule, which addresses the 42 U.S.C. § 7410(a)(2)(D)(i) element of the 1997 ozone NAAQS Infrastructure SIPs. Fact 68. This history of delay—which is still currently denying millions of people needed protection for ozone pollution—means that timely implementation of the 2008 ozone NAAQS is even more important.

The Court should reject any arguments by EPA that Plaintiffs' proposed deadlines are impossible to meet. The United States District Court for the District of Arizona was confronted with a similar assertion from EPA in a suit to compel the agency to review the NAAQS for Particulate Matter (PM). The analysis that court utilized applies equally to this case:

In such circumstances, the agency carries a heavy burden to show that compliance with statutory mandated deadlines is impossible or infeasible. Excuses for delay must go beyond the general proposition that further study and analysis of materials will make final agency action better, because further study will always make everything better, and it is always easier to do something with more rather than less time.

American Lung Ass'n v. Browner, 884 F. Supp. 345, 347 (D.Ariz. 1994) (internal citations omitted); *see also Sierra Club v. Thomas*, 658 F. Supp. 165, 172 (N.D. Cal. 1987) (the burden on

1 the agency to show impossibility “is especially heavy where the agency has failed to demonstrate
2 any diligence whatsoever in discharging its statutory duty...and has in fact ignored that duty for
3 several years.”); *Alabama Power Co. v. Costle*, 636 F.2d 323, 359 (D.C. Cir. 1979) (“The
4 agency's burden of justification in such a case is especially heavy.”). In justifying its decision to
5 order a shorter timeline than that proposed by EPA for the review process, the court pointed out
6 that by allowing the NAAQS review deadline to lapse, “the EPA has not merely missed a
7 deadline, it has nullified the congressional scheme for a fixed interval review and revision
8 process.” *American Lung Ass’n v. Browner*, 884 F. Supp. at 348. Notably, although EPA
9 contended that it simply could not perform the review for particulate matter in less than 4
10 years and 3 months, *Id.* at 346-347, the agency was nonetheless able to complete this PM
11 NAAQS review in less than three years. *See* 62 Fed. Reg. 38,652 (July 18, 1997)
12 (finalizing the revised NAAQS for PM). Moreover, the product of this PM NAAQS review
13 process survived legal challenges raised by both business and environmental groups,
14 demonstrating that three years is ample time for EPA to select defensible air quality
15 standards. *See American Trucking Assns. v. EPA*, 283 F.3d 355, 358 (D.C. Cir. 2002), *rev’d*
16 *in part on other grounds, aff’d in part sub nom. Whitman v. American Trucking Associations*,
17 531 U.S. 457 (2001). Therefore, the Court should order EPA to sign a final rule regarding
18 findings of failure to submit for the 42 states in question within 30 days of the Court’s order and
19 requiring EPA to forward the signed rule to the Office of the Federal Register within two
20 business days of signature.

D. Plaintiffs are entitled to summary judgment as to EPA's failure to promulgate Prevention of Significant Deterioration regulations

1. EPA is liable for failing to promulgate Prevention of Significant Deterioration regulations for the 2008 Ozone NAAQS

Plaintiffs are entitled to summary judgment as to EPA's failure to promulgate prevention of significant deterioration regulations for the 2008 ozone NAAQS. As explained above, Plaintiffs have already briefed and argued why 42 U.S.C. § 7476(a) (second sentence) creates a mandatory duty and will not repeat it here. Likewise, Plaintiffs have already demonstrated above that it has been more than two years since EPA promulgated the 2008 ozone NAAQS. Since EPA has not promulgated prevention of significant deterioration regulations for the 2008 ozone NAAQS, EPA is liable for its failure to comply with its mandatory duty in 42 U.S.C. § 7476(a). Therefore, Plaintiffs are entitled to summary judgment on their second claim.

2. The Court should require EPA to issue a proposed Prevention of Significant Deterioration rule within eight months and a final rule within a year

As to remedy, the Court should require EPA to sign a proposed prevention of significant deterioration rule for the 2008 ozone NAAQS within eight months of the Court's order. As this rulemaking will involve more technical analysis than the finding of failure to submit, Plaintiffs believe that EPA will need more than 30 days. In addition, this rule making would involve notice and an opportunity for public comment. However, EPA is not starting from scratch on this. EPA already has some prevention of significant deterioration rules for ozone. *See e.g.* 40 CFR 52.21(b)(23)(i) (setting the PSD significant emission rate for ozone at 40 tons per year of volatile organic compounds or nitrogen oxides, which are ozone precursor chemicals). In addition, EPA has already started on the process of evaluating models to design for use in

determining whether major sources cause or contribute to a violation of the ozone NAAQS. *See* Shelley Decl. Ex. 8; 77 Fed. Reg. 4,808 (Jan. 31, 2012)(EPA held 10th modeling conference on March 13 – 15, 2012). EPA simply needs to determine if these rules need to be adjusted based on the 2008 ozone NAAQS of 75 parts per billion. Eight months from the Court’s order—approximately five years after EPA signed the 2008 ozone NAAQS rule and three years after the Congressionally mandated deadline—would be a reasonable amount of time to conduct this analysis. An additional four months after the proposed rule would give EPA enough time to have a typical 30-day public comment period and review and respond to those comments.

E. Plaintiffs are entitled to summary judgment as to EPA’s failure to take final action on the Tennessee and Kentucky 2008 ozone Infrastructure SIP Submittals

1. EPA is liable for failing to take final action on the Kentucky and Tennessee 2008 Ozone Infrastructure SIP submittals

Plaintiffs are entitled to summary judgment as to their third claim because defendants have missed a statutory deadline. As discussed above, 42 U.S.C. § 7410(k)(2) and (3) establish a deadline for EPA to take final action within twelve months of a state SIP submittal being deemed administratively complete.

Kentucky submitted its 2008 ozone NAAQS Infrastructure SIP to EPA on September 8, 2009. Fact 74. Kentucky’s submittal was deemed administratively complete by operation of law on March 8, 2010. 42 U.S.C. § 7410(k)(1)(B). *See also* Fact 75. Twelve months after March 8, 2010 is March 8, 2011, a date that has already passed. Yet EPA has failed to take final action on Kentucky’s submittal. Fact 76.

Tennessee submitted its 2008 ozone NAAQS Infrastructure state implementation plan to EPA on October 19, 2009. Fact 77. Tennessee’s submittal was deemed administratively

complete by operation of law on April 19, 2010. 42 U.S.C. § 7410(k)(1)(B). *See also* Fact 78. Twelve months after April 19, 2010 is April 19, 2011, a date that has already passed. Yet EPA has failed to take final action on Tennessee's submittal. Fact 79.

Therefore, EPA is in violation of its mandatory duty under 42 U.S.C. §7410(k)(2) and (3) to take final action on Kentucky and Tennessee submittals of the 2008 ozone NAAQS Infrastructure SIP. Thus, Plaintiffs are entitled to summary judgment on claim three.

2. The Court should require EPA to issue a proposed rule within three months and a final rule within five months on the Kentucky and Tennessee submittals

The Court should issue an order requiring EPA to issue a proposed rule within three months and a final rule within five months to approve or disapprove, in whole or part, the Kentucky and Tennessee 2008 ozone Infrastructure SIP submittals. For reasons discussed above in part III.C—the severe and widespread harm of ozone pollution and a history of EPA delay—an expeditious schedule is essential.

In addition, it is important to keep Kentucky and Tennessee on as consistent a schedule for promulgation of a Federal Implementation Plan (FIP) with other states as possible, considering the problems that EPA has already created by its delay. By way of explanation, when EPA makes a finding of failure to submit a SIP, that triggers a mandatory duty for EPA to promulgate a FIP that fulfills the SIP's unmet obligations. 42 U.S.C. § 7410(c)(1)(A). EPA must promulgate this FIP within two years of the finding of failure to submit. 42 U.S.C. § 7410(c)(1). Similarly, when EPA disapproves a SIP submittal, EPA must promulgate a FIP to fulfill the obligations of the disapproved SIP within two years of the disapproval. 42 U.S.C. § 7410(c)(1)(B). It is likely that EPA will use a regional program that applies to multiple states to meet the obligation of the Good Neighbor provisions in 42 U.S.C. § 7410(a)(2)(D)(i)(I) for many

1 states. EPA will likely do this through FIPs rather than SIPs. However, if EPA does not take
2 final action on the Kentucky and Tennessee submittals in approximately the same time frame as
3 EPA issues a finding of failure to submit for other states, then Kentucky and Tennessee's FIP
4 deadlines will not align with other states' FIPs, thus making a regional solution to prevent states
5 from causing ozone problems in downwind states difficult. Again, Plaintiffs are not the only
6 ones to express the concern that EPA take final action on the Kentucky and Tennessee submittals
7 in a timely manner to allow for a coordinated approach to deal with downwind impacts.
8 Maryland recently told EPA that it had the same concern. Fact 80.

9 Unlike a finding of failure to submit, however, final action on a SIP submittal does
10 require EPA to undergo notice and comment rulemaking. A 30 day-deadline is not possible, but
11 again, EPA is not starting from scratch. Just last year, EPA finally took final action on the
12 Kentucky Infrastructure SIP for the 1997 ozone NAAQS. *See* 76 Fed. Reg. 41,088 (July 13,
13 2011). Just last month, EPA finally took final action on part of the Tennessee Infrastructure SIP
14 for the 1997 ozone NAAQS. *See* 77 Fed. Reg. 14,976 (Mar. 14, 2012). EPA, Sierra Club, and
15 WildEarth Guardians have a settlement agreement requiring EPA to take final action on the rest
16 of the Tennessee Infrastructure SIP for the 1997 ozone NAAQS by no later than July 31, 2012.
17 *See Sierra Club v. Jackson*, 3:10-cv-4060-CRB (N.D. Cal), Settlement Agreement ¶11(b).
18 EPA's review of the Infrastructure SIP for the 1997 ozone NAAQS should address most of the
19 needed elements for the Infrastructure SIP for the 2008 ozone NAAQS, with the critical
20 exception of the Good Neighbor provisions in 42 U.S.C. § 7410(a)(2)(D)(i). For example, 42
21 U.S.C. § 7410(a)(2)(E)(ii) requires that Infrastructure SIPs include certain conflict of interest
22 provisions for air pollution control board members. EPA's analysis of this for the 1997 ozone
23 NAAQS Infrastructure SIP should be the same as for the 2008 ozone NAAQS.

As for the critical Good Neighbor provisions, EPA's analysis of the Kentucky and Tennessee submittals is not complicated because Kentucky and Tennessee's submittals are obviously flawed and thus must be disapproved. For example, Kentucky's submittal only addresses emission limits designed to deal with the 1997 ozone NAAQS. Fact 84. Tennessee's submittal suffers from the same defect, although it also discusses Tennessee's permitting programs, which are covered under 42 U.S.C. § 7410(a)(2)(C), not 42 U.S.C. § 7410(a)(2)(D)(i)(I). Facts 85-86. Tennessee goes on to say that if EPA adopts new guidance on how to implement the 2008 ozone NAAQS Good Neighbor provisions, then Tennessee will adopt the SIP revisions required by EPA's guidance. Fact 87. A promise of future unspecified action is not an approvable SIP provision. *See* 42 U.S.C. § 7410(k)(4) (emphasis added) (EPA can grant conditional approval if there is a commitment to "adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval").

Therefore, in light of the significant health and welfare issues, the need for consistency between all the states, and the limited extent of the task, a five-month deadline is reasonable.

IV. CONCLUSION

For the reasons explained above, Plaintiffs respectfully request that the Court grant summary judgment as to Plaintiffs' first, second, and third claims for relief and order EPA to (1) issue findings of failure to submit for 42 states' infrastructure state implementation plans for the 2008 ozone NAAQS in accordance with 42 U.S.C. § 7410(k)(1)(B) and within thirty days, (2) promulgate final Prevention of Significant Deterioration regulations for the 2008 ozone NAAQS within a year, and (3) take final action on Kentucky and Tennessee submittals in accordance with 42 U.S.C. § 7410(k)(2) and (3) within five months.

Respectfully submitted,

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